strong practical reasons for this latter view, as in the case of a decline in the value of the goods the vendor under it is entitled to recover his loss from the vendee, while of course if the contract were rescinded he could not. In a recent case the vendor had stopped the goods in transit and sold them, without notice to the vendee, for less than the contract price. In an action brought for the deficiency the defendant demurred to a declaration setting out the above facts, and the demurrer was sustained. *Davis Sulphur Co.* v. *Atlanta Guano Co.*, 34 S. E. Rep. 1011 (Ga.). The court denied that stoppage *in transitu* rescinded the contract, but it seems difficult to sustain the decision on any other theory.

Where a mortgagee wrongfully sells the property mortgaged for less than the mortgage debt and sues for the debt, the mortgagor undoubtedly has an equitable right to set off the amount the mortgagee received for the goods, or, if they were sold for less than their fair market value, the set-off would be of what they were worth at the time of the sale. The vendor in the principal case, after the stoppage, occupied the position of a mortgagee, and, even though the sale were wrongful by reason of failure to give notice, he would still be entitled to the difference between the contract price and the market value of the goods at the time of the sale. But where the goods are perishable, or subject to rapid fluctuations in value, it seems only equitable to allow the vendor to resell the goods without waiting to notify the vendee. *Diem* v. *Koblitz*, 49 Ohio St. 41. It would indeed be strange for equity to give the vendor the right to stop *in transitu* and at the same time to hedge it with such restrictions as greatly to impair or, in many cases, altogether destroy its value. Consequently the duty is on the defendant to set up the equitable defence that the sale by the plaintiff was made under such circumstances as to be unjustifiable, and that the contract price was not greater than the fair market value of the goods at the time of the resale. The demurrer to the declaration in the principal case, therefore, should have been overruled.

Liability for Negligent False Statements. — How far liability exists, apart from contract, for damages resulting from action on negligent, but not fraudulent, false statements, made with the intention or knowledge that they will be acted upon, is extremely unsettled. In a recent case, the plaintiff, relying on the negligent statement of the defendant, a physician, that she incurred no danger, dressed a malignant sore, for which the defendant was treating her husband, and thereby became infected. In an action brought for the injury, the defendant was held liable. *Edwards* v. *Lamb*, 45 Atl. Rep. 480 (N. H.). Had the defendant gratuitously operated on the plaintiff, and negligently injured her, his liability would have been undoubted. The question is, does liability disappear when the negligence is in words? The English courts have accepted the dictum in *Peek* v. *Derry*, 14 App. Cas. 337, that no liability exists for false statements not known to be false. *Angus* v. *Clifford*, [1891] 2 Ch. 449. In America some states have taken the same view. *Marsh* v. *Fuller*, 40 N. Y. 562; *Hubbard* v. *Weare*, 44 N. W. Rep. 915 (Ia.); others have openly declared that negligent false statements, intended to be acted upon, cause liability for any resulting damage. *Houston* v. *Thornton*, 29 S. E. Rep. 827 (N. C.); *Harriott* v. *Plimpton*, 166 Mass. 585. Some few states have reached this same result by conclusively presuming knowledge where the truth ought to have been known, and so finding fraud.

Watson v. *Jones*, 25 S. E. Rep. 678 (Fla.) ; *Cotzhausen v. Simon*, 47 Wis. 103.

The broader doctrine, according to which the principal case was decided, seems, theoretically and practically, to be sound. If a man is held liable where his acts cause damage as a reasonable and probable consequence, it is just that he should similarly be held liable where his words, through another's acting on them as intended, have the same consequence. A physician cannot rightly be absolved from liability for damage resulting from his negligence, because he advises a certain course of conduct instead of administering medicine or performing an operation. In both cases it is his negligent acts, for words are acts, which cause the damage. And the difficulty of deciding what is negligent statement is no greater than the difficulty, with which juries now successfully contend, of deciding what is negligent conduct. As civilization progresses, every one must depend more and more on the statements of experts. These men should be held to as high a standard of care as bridge-builders, railroad managers, or others whose work consists in acts, as distinguished from words, for on the carefulness of both alike the well-being of the community depends. In England the courts will probably feel bound to follow the dictum in *Peek* v. *Derry*, *supra*, at least until its authority becomes quietly dissipated by not being followed in spirit. But in America, where the question is still practically unsettled, it is to be hoped that the courts will accept the broad doctrine that negligent statements, made with the intention or knowledge that they will be acted upon in matters of importance, cause liability for damage resulting from such action.

THE LIABILITY OF TRUST ESTATES FOR TORTS OF THE TRUSTEE. — An interesting question was presented in a recent case, *Re Raybould*, [1900] 1 Ch. 199. A trustee, while working a colliery for the benefit of the trust estate, caused, without personal negligence on his part, a subsidence of the plaintiff's adjoining property. The plaintiff recovered judgment against the trustee for the damage. It was held that since the trustee was entitled to be indemnified out of the trust estate, the plaintiff could have the benefit of this right and obtain payment of the judgment directly out of the trust estate.

This decision was very severely criticised in a recent number of the Law Times (March 17th, 1900). The decision was said to be based on a subrogation of the plaintiff to the trustee's right to indemnity. Yet the court did not profess to place the decision on that doctrine, and there would not seem to be the slightest element of subrogation involved. The right to be subrogated to a claim exists only where a person in a position analogous to that of surety is compelled either by his obligation or his own interest to satisfy that claim. It is based on a presumed assignment of the claim to him in consequence of his having paid the original claimant, and cannot therefore exist before there is actual payment. So far is the principal case from being one of subrogation that the right here exists before payment by the trustee — had there been payment, no right against the trust estate could arise. The true explanation of the principal case, as well as of the large class of cases holding that where debts are incurred by a trustee authorized to carry on a business for the benefit of the trust estate, creditors can proceed directly against the estate, is that